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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER ST. NO. 20296 OF 2019  
WITH  
CIVIL APPLICATION ST. NO. 20297 OF 2019  
IN  
APPEAL FROM ORDER ST. NO. 20296 OF 2019**

Harnam Niwas Co-operative Housing  
Society Limited & ors. ..Appellants

vs.

Municipal Corporation of Greater  
Mumbai and ors. ..Respondents

....

Aseem Naphade a/w. Harpreet Singh, Sneha Agicha I/b. Solicis  
Lex for appellants.  
Mrs. Oorja Dhond for MCGM.

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**CORAM : M.S.KARNIK, J.**

**DATE : 23<sup>rd</sup> JULY, 2019**

**P.C. :**

Heard learned counsel for the appellants and learned  
counsel appearing on behalf of the respondents – corporation.

2. The challenge in this Appeal is to an order dated 8<sup>th</sup>  
July, 2019 passed by the City Civil Court dismissing the Notice  
of Motion No. 1477 of 2019 filed by the appellants. The  
appellants challenged the notice issued by the defendants -

corporation dated 25/3/2019. The corporation by issuing notice under Section 354 of the Mumbai Municipal Corporation Act, called upon the appellants to pull down the suit building.

3. The corporation by a communication dated 27<sup>th</sup> July, 2018 informed the occupants/owners/tenants of the suit building about the structural audit report done by M/s. Retro Fitters Consulting Engineers. After carrying out necessary tests, the report categorized the building as C1 category and concluded that the building needs to be evacuated/demolished immediately. The said report of M/s. Retro Fitters Consulting Engineers is at page 57 of the paper book.

4. The occupants submitted a structural audit report of SBP Engineers & Associates. The structural audit report of the occupants mentions about the various tests carried out and concluded that the building requires major structural repairs and categorized the building as C2-A category. In view of the conflicting reports, the matter was referred to the Technical Advisory Committee ('TAC' for short).

5. The TAC held its meeting on 22<sup>nd</sup> January, 2019 when the structural consultant of the appellants was also heard. The TAC considered both the reports. The relevant portion of the report reads thus :

“During the meeting Chairman asked the consultant that looking to the overall dilapidated condition of the building and the total repairing cost quoted by the consultant appears to be of conflicting nature. The expected repairs cost of Rs.100/- sq.ft. appears to be totally baseless and inappropriate. Only minor repairs can be carried out within the said cost. The major structural repairs would require repairs cost on much higher side. Further, the Chairman enquired about durability of the structure after repairs within the estimated amount of Rs.100/- sq.ft. The consultants opined that the structure will survive atleast for next 8 to 10 years.

**TAC Conclusion :-**

On basis of the reports submitted by the Structural Auditors, visual inspection carried out by the members of the TAC & proceedings of this meeting, it is unanimously decided by the TAC that the structure known as Harinam Niwas and Ishwar Niwas Building situated opposite Sant Ghadage Maharaj Udyan, Off L.B.S. Road, Ghatkopar (West), Mumbai 400 086 is structurally deteriorated and is in dilapidated condition. The building may collapse without giving any warning thereby endangering life & property of occupants of the building and also the occupants of the adjoining properties and passers thereby.

In view of above, it is unanimously declared that the above cited falls under C-1 category. Under the circumstances the structure under reference needs to be vacated and demolished immediately.

Designated Officer, N Ward shall therefore take necessary action as per the policy guidelines issued in this regards.”

6. Learned counsel for the appellants submitted that the action of demolition is sought to be taken at the instance of the owner of the suit building. He submitted that Section 354 notice dated 25<sup>th</sup> March, 2019 and the notice to vacate the suit building issued by the owner are of the same date. This would show that action taken by the corporation is at the instance of the owner. He would further submit that the structural consultants of the appellants clearly opined that the building is in repairable condition. He submitted that the occupants would vacate the building and carry out the repairs as opined by the structural consultant. He would further invite my attention to the order dated 8<sup>th</sup> April 2019 passed by the trial Court wherein it was mentioned that the corporation will be at liberty to visit, inspect, measure and/or conduct test in the suit building for coming to proper conclusion in respect of condition of the suit building. The trial Court further observed that considering the ruinous condition of the suit building, the TAC shall complete its procedure for arriving at proper conclusion

after following guidelines in Writ Petition No.1135 of 2014 at the earliest.

7. Learned counsel for appellants would submit that none of the directions issued by the trial Court have been complied with. He would further submit that though the application for carrying out the repairs was made, the corporation has not taken any decision thereon. He would submit that in view of the order dated 8<sup>th</sup> April, 2019 passed by the trial Court, it was incumbent upon the corporation to have inspected the suit premises and/or atleast decide the application made by the appellants for carrying out repairs. Learned counsel would submit that even now the occupants are willing to carry out the repairs. He would vehemently urge that the occupants are residing in the suit building which is in a habitable condition and he also relied upon the photographs to indicate the condition of the suit building cannot be stated to be dilapidated. In support of his submission he relied upon the decision of this Court in the case of **Goldie Sud v/s. The Municipal**

**Corporation of Greater Mumbai (MCGM) and others in Writ Petition (L) No. 3251 of 2017** and the order dated 21<sup>st</sup> August, 2018 in **Appeal from Order (Stamp) No. 23630 of 2018**. He would submit that this Court has held that even before issuing notice under Section 354, the corporation officers have to apply their mind before taking drastic action and issuing the notice for demolition of the building.

8. Per contra, learned counsel for the corporation would invite my attention to the order passed by the Court below. She also invited my attention to the findings recorded by the TAC.

9. With the assistance of learned counsel for the appellants and the respondents – corporation, I have gone through the report submitted on behalf of the tenants as well as M/s. Retro Fitters Consulting Engineers. Even in so far as the report filed on behalf of the tenants is concerned, the said report would indicate that major structural repairs are required. He has opined that during the course of structural repairs, the building

needs to be vacated. Further, he has stated that regular maintenance is required after every 3 years and structural repairs are required after 10 years. It is stated that projected repair cost per square feet is Rs.100/- and projected reconstruction cost/sq.ft. is Rs.2500/-.

10. The TAC after considering both the reports and after carrying out the visual inspection of the building by members of the TAC came to the conclusion that the structure is deteriorated and is in dilapidated condition. It is further stated that the building may collapse without giving any warning thereby endangering life and property of occupants of the building and also the occupants of the adjoining properties and passer by. It is in these circumstances, after considering both the reports and upon visual inspection, the TAC came to the conclusion that the building needs to be vacated and demolished immediately.

11. I have also seen the photographs of the building relied upon by the corporation and also as submitted by learned counsel for the appellants. Having gone through the findings of

the TAC and also taking into consideration the observations of the TAC that the expected repair cost of Rs.100/- sq.ft. appears to be totally baseless and inappropriate and that only minor repairs can be carried out within the said costs, further that major structural repairs would require repair cost on much higher side, I find no reason to fault this view of the TAC.

12. Even the report of the structural consultant of the appellants indicates that the regular maintenance is required after every 3 years and structural repairs are required after 10 years.. In this view of the matter, it is not open for me to substitute my opinion for that of expert committee, more so when TAC has taken into consideration the conflicting reports and after hearing all concerned including structural consultant of the appellants has to come to the conclusion that the building is in dilapidated condition which requires demolition.

13. For all these reasons it is not possible for me to interfere with the order passed by the Court below. Hence, Appeal from Order is rejected.

14. At this stage, learned counsel for the appellants requests that ad-interim granted by the trial Court be continued for sometime and that he would file an undertaking of the appellants that they will be residing in the suit building at their own risk. However as I have come to the conclusion that no interference is warranted with the view taken by the trial Court, I do not find this is to be a fit case to continue ad-interim order.

15. The Appeal from Order is rejected.

16. In view of the disposal of the Appeal, nothing survives for consideration in the Civil Application. The Civil Application is also disposed of.

**(M.S.KARNIK, J.)**